

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ANDRULIS PHARMACEUTICAL CORP.,
Plaintiff-Appellant,

v.

CELGENE CORPORATION,
Defendant-Appellee.

2015-1962

Appeal from the United States District Court for the District of Delaware in No.
13-cv-01644, Judge Richard Andrews

**CELGENE'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE ITS RESPONSE BRIEF**

Pursuant to Federal Rule of Appellate Procedure 26(b) and Federal Circuit Rule 26(b), defendant-appellee Celgene Corporation (“Celgene”) respectfully moves for an extension of time to file its response brief, which is currently due on Thursday, January 14, 2016, to and including Tuesday, February 16, 2016. (Because the thirtieth day falls on a holiday weekend, the deadline for the requested extension is Tuesday, February 16.) This motion is based on good cause for the reasons set forth below and in the supporting Declaration of Calvin P. Griffith, counsel for Celgene.

1. Andrulis Pharmaceutical Corp. (“Andrulis”) owns U.S. Patent No.

6,140,346 (the “‘346 patent”) and has asserted it against Celgene. The district court found the only asserted claim of the ’346 patent invalid for indefiniteness. Andrulis appealed.

2. On October 26, 2015, Andrulis moved for a 30-day extension to file its principal brief, which Celgene did not oppose. Andrulis’s motion noted that it had “agreed that it will not oppose a motion by Appellee to extend time to submit its principal response brief should Appellee determine an extension is needed.” Doc. No. 18. The Court granted Andrulis’s motion. Doc. No. 19.

3. Celgene hereby requests a 30-day extension of time to file its reply brief.

4. Good cause exists for the requested extension. As a result of Andrulis’s extension, the briefing period for Celgene’s response brief now falls over the year-end holidays, during which Celgene’s in-house and outside counsel have longstanding personal commitments. The requested extension will allow Celgene’s counsel to carefully prepare its response brief while also fulfilling other significant professional obligations, including the following matters that fall within the current briefing period or shortly thereafter:

a) reply briefs and appendices filed on December 7 and 23, 2015, in

Purdue Pharma L.P. v. Depomed, Inc., No. 15-2029(L), and *Purdue Pharma L.P. v. Amneal Pharmaceuticals, LLC*, No. 15-1654,
respectively;

- b) a confidential mediation on January 5, 2016, in a case pending before a FINRA arbitration panel;
- c) a patent trial in Norway beginning on February 2, 2016, and scheduled to end on February 20, 2016, with substantial pre-trial preparations beforehand; and
- d) proceedings at the European Patent Office on February 15 and 16, 2016, with substantial pre-trial preparations beforehand.

In addition, Ms. Swize was out of the office the week of December 7 due to illness.

5. Andrulis does not oppose this motion.

Dated: December 24, 2015

Respectfully submitted,

/s/ Calvin P. Griffith
CALVIN P. GRIFFITH
JONES DAY
North Point, 901 Lakeside Ave.
Cleveland, OH 44114
Telephone: (216) 586-7050
cpgriffith@jonesday.com

ANTHONY M. INSOGNA
JONES DAY
12265 El Camino Real
San Diego, CA 92130
Telephone: (858) 314-1130
aminsogna@jonesday.com

JENNIFER L. SWIZE
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-5417
jswize@jonesday.com

*Counsel for Defendant-Appellee
Celgene Corporation*

CELGENE'S CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4, counsel for Defendant-Appellee Celgene Corporation certifies as follows:

1. The full name of every party represented by me in this case is:

Celgene Corporation

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

N/A

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Jones Day: Calvin P. Griffith; Anthony M. Insogna; Jennifer L. Swize; Toni-Ann Citera; Gasper J. LaRosa; John C. Evans; Kenneth S. Canfield; and Jennifer L. Del Medico.

Morris Nichols Arsh & Tunnell LLP: Mary B. Graham; Derek J. Fahnestock; and Stephen J. Kraftschik.

DECLARATION OF CALVIN P. GRIFFITH IN SUPPORT OF CELGENE'S MOTION FOR EXTENSION OF TIME TO FILE ITS REPLY BRIEF

I, Calvin P. Griffith, an attorney, declare as follows:

1. I submit this declaration in support of Appellee Celgene's Motion for Extension of Time to File Its Response Brief.

2. Appellee Andrulis has received a 30-day extension of time in this appeal for its opening brief.

3. As a result of Andrulis's extension, the briefing period for Celgene's response brief now falls over the year-end holidays, during which Celgene's in-house and outside counsel have longstanding personal commitments. The requested extension will allow Celgene's counsel to carefully prepare its response brief while also fulfilling other significant professional obligations, including the following matters that fall within the current briefing period or shortly thereafter:

- On December 7 and 23, 2015, respectively, Jennifer L. Swize has had reply briefs and appendices each due in two other appeals pending in this Court—*Purdue Pharma L.P. v. Depomed, Inc.*, No. 15-2029(L), and *Purdue Pharma L.P. v. Amneal Pharmaceuticals, LLC*, No. 15-1654. In addition, Ms. Swize was out of the office the week of December 7 due to illness.
- On January 5, 2016, Mr. Griffith must conduct a confidential mediation as a party in a case pending before a FINRA arbitration panel.

• Beginning on February 2, 2016, and scheduled to continue until February 20, 2016, Anthony M. Insogna will be participating in a patent trial in Norway. He has had substantial responsibilities associated with preparing for the trial.

• On February 15 and 16, 2016, Mr. Insogna will be participating in hearings at the European Patent Office. He will have responsibilities associated with preparing for the hearings.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 24, 2015 Respectfully submitted,

/s/ Calvin P. Griffith
CALVIN P. GRIFFITH
JONES DAY
North Point, 901 Lakeside Ave.
Cleveland, OH 44114
Telephone: (216) 586-7050
cpgriffith@jonesday.com

Counsel for Defendant-Appellee Celgene Corporation

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2015, I served a copy of the foregoing on all counsel of record by CM/ECF.

/s/ Jennifer L. Swize
JENNIFER L. SWIZE
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3939
Facsimile: (202) 727-1600
jswize@jonesday.com